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Paper No. 30
EWH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Unitech International Inc.

Serial No. 75/306,377

Ezra Sutton for Unitech International Inc.

Allison Hall, Trademark Examining Attorney, Law Office 103
(Michael Szoke, Managing Attorney).

Before Cissel, Hanak and Holtzman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Unitech International Inc. (applicant) seeks to
register in typed drawing form UNITECH 3 IN 1 POWERVAC for
"vacuum cleaners." The intent-to-use application was filed
on June 10, 1997.

Citing Section 2(d) of the Trademark Act, the Examining
Attorney has refused registration on the basis that
applicant's mark, as applied to vacuum cleaners, is likely
to cause confusion with the mark POW-R-VAC, previously
registered in typed drawing form for "electric vacuum
cleaners for domestic use." Registration No. 1,688,801.

When the refusal to register was made final, applicant
appealed to this Board. Applicant and the Examining

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Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the goods, they are legally identical. Applicant's own chosen description of goods is simply "vacuum cleaners" and this description is broad enough to include the goods of the cited registration, namely, "electric vacuum cleaners for domestic use." Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1814 (Fed. Cir. 1987).

Considering next the marks, we note at the outset that when the goods of the parties are legally identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992)

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This is particularly true when not only are the goods legally identical, but in addition, they are ordinary consumer items such as vacuum cleaners. See Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984) and In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

At first blush, it would appear that registrant's one word mark and applicant's five word mark are only slightly similar. However, it must be remembered that both the registered mark and applicant's mark are depicted in typed drawing form. This means that both the registered mark and applicant's mark are "not limited to the mark[s] depicted in any special form[s]." Phillips Petroleum v. C. J. Webb, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). Accordingly, in our likelihood of confusion analysis, we must consider all reasonable manners in which the marks could be depicted, and in particular, we must take special note of the actual manners in which applicant and registrant have depicted their marks. Phillips Petroleum, 170 USPQ at 36; INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

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Applicant has submitted a one page product specimen sheet featuring its UNITECH 3 IN 1 POWERVAC vacuum cleaner. In this product specimen sheet, there is a picture of applicant's vacuum cleaner, and on this vacuum cleaner there are two depictions of applicant's mark. In the center of the vacuum cleaner, applicant has depicted its mark with the UNITECH portion on one line, the 3 IN 1 portion on a second line and the POWERVAC portion on a third line. A consumer familiar with registrant's POW-R-VAC vacuum cleaners, upon viewing the foregoing depiction of applicant's mark, could easily assume that registrant's and applicant's vacuum cleaners were the same brand. To elaborate, consumers may well believe that both vacuum cleaners had essentially the same brand name, namely, POW-R-VAC or POWERVAC. These consumers could view the UNITECH portion of applicant's mark as indicating the name of the manufacturer of the vacuum cleaner which, of course, is the case in that applicant's name is Unitech International Inc. As for the 3 IN 1 portion of applicant's mark, applicant has conceded at page 1 of its appeal brief that this portion is suggestive of certain properties of its vacuum cleaners, namely, that they can function as handheld vacuums, upright vacuums and power

brushes.

However, even more troubling is the manner in which applicant depicts its mark on the base of its vacuum cleaner. In this manner of depiction, the UNITECH portion of applicant's mark is far removed from the 3 IN 1 POWERVAC portion of applicant's mark. This manner of depiction could result in consumers not even noticing the UNITECH portion of applicant's mark. In other words, this manner of depiction would cause consumers to see simply the 3 IN 1 POWERVAC portion of applicant's mark. By simply focusing on the 3 IN 1 POWERVAC portion of applicant's mark, consumers, familiar with registrant's POW-R-VAC vacuum cleaners, could be of the belief that applicant's vacuum cleaner is simply a more advanced or sophisticated version of the original POW-R-VAC vacuum cleaners in that applicant's vacuum cleaner functions as a handheld vacuum, an upright vacuum and a power brush. (We also note that at the top left-hand corner of applicant's product specimen sheet there appears simply the mark 3 IN 1 POWERVAC without any depiction of the term UNITECH. However, because applicant is not seeking to register simply 3 IN 1 POWERVAC, we have not considered this manner of depiction in our likelihood of confusion

analysis.)

Put quite simply, applicant itself has elected to depict its mark in a manner such that the UNITECH portion is far removed from the remainder of the mark, leaving only the suggestive 3 IN 1 portion on a separate line above the POWERVAC portion of applicant's mark. Given the fact that the POWERVAC portion of applicant's mark is identical to the cited mark POW-R-VAC in terms of pronunciation and connotation and the fact that the POWERVAC portion of applicant's mark and POW-R-VAC are similar in visual appearance, we find that the use of applicant's mark (as actually depicted by applicant) and registrant's mark on identical ordinary consumer goods is likely to result in a likelihood of confusion.

Of course, it need hardly be said that to the extent that there are any doubts on the issue of likelihood of confusion, said doubts must be resolved in favor of the registrant. In re Martin's Famous Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.

